

**REMARKS**

In the Final Office Action<sup>1</sup>, the Examiner rejected claims 19-21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, and 49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,762,748 to Maattaet et al. ("Maattaet") in view of U.S. Patent No. 5,504,502 to Arita et al. ("Arita"). Claims 19-21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, and 49 remain pending and under current examination.

Applicant respectfully traverses the rejection of claims 19-21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, and 49 under 35 U.S.C. § 103(a) as being unpatentable over Maattaet in view of Arita. A *prima facie* case of obviousness has not been established.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See *M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007)*. "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." *M.P.E.P. § 2145*. Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. *M.P.E.P. § 2143.01 (III), internal citation omitted*. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole

---

<sup>1</sup> The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement of characterization in the Final Office Action.

would have been obvious." M.P.E.P. § 2141.02(1), internal citations omitted (emphasis in original).

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q 459 (1966).... The factual inquiries ... [include determining the scope and content of the prior art and] ... [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(11). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(111).

Maattaet fails to teach or suggest each and every element recited in independent claim 19. For example, Maattaet does not disclose at least Applicant's claimed device, including a "ring-like magnet" that is "internally and externally magnetized in the **direction of its radius** of said ring-like magnet," as recited in claim 19 (emphasis added).

Figure 3a of Maattaet on which the Examiner relies, illustrates a top view of **stacked** annular magnets 300 with four magnetic sensors 320, 321, 322, and 323. Maattaet discloses that "the magnets 300 emit a magnetic flux 310 from the north to south poles." Maattaet, Col. 6, lines 1-2. Further, Figure 2a of Maattaet clearly shows that magnetic flux 310 radiates out in an **elliptical manner** and starts at the North Pole of magnet 1 (M1) and seeks a South Pole of magnet 2 (M2). This is not the same as a "ring-like magnet" that is "internally and externally magnetized in the **direction of its radius** of said ring-like magnet," as recited in claim 19 (emphasis added). Further, a ring-like magnet that is internally and externally magnetized means that "the ring-like

magnet is magnetized in the **radial direction from inside to outside** to exist as North pole and South pole" (emphasis added). Therefore, the claimed "ring-like magnet" emits a magnetic flux in a **radial direction from inside to outside**, rather than in an **elliptical manner** as taught by the prior art.

In addition, the Examiner admitted that Maattaet "does not expressly disclose variations in the magnetic flux." Final Office Action, page 2. In an attempt to cure this deficiency, the Examiner asserted that Arita, however, teaches these features. Even assuming this assertion is true, which Applicant does not concede, Arita fails to cure the deficiencies of Maattaet already discussed. That is, Arita fails to teach or suggest a device, including a "ring-like magnet" that is "internally and externally magnetized in the **direction of its radius** of said ring-like magnet," as recited in claim 19 (emphasis added).

In view of the mischaracterization of the Maattaet reference, above, the Final Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of claim 19. Moreover, there is no motivation for one of ordinary skill in the art to modify the references to achieve the claimed combinations. Thus, the Examiner has failed to clearly articulate a reason why claim 19 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to independent claim 19 and the rejection under 35 U.S.C. § 103(a) must be withdrawn. Claims 20, 21, 23-26, 33-35, 37, 38, 43, 44, 46, 47, and 49 are allowable at least by virtue of their dependence upon claim 19.

**CONCLUSION**

In view of the foregoing remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

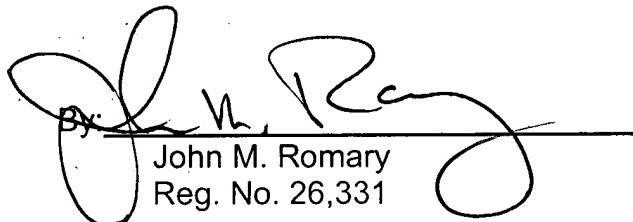
The arguments presented herein do not raise new issues beyond responding to the Final Office Action, and do not necessitate the undertaking of any additional search of the art by the Examiner. Therefore, this Request for Reconsideration after Final should allow for immediate and favorable action.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: February 8, 2008



John M. Romary  
Reg. No. 26,331